

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Section 632
Title 14, California Code of Regulations
Re: Stewarts Point State Marine Reserve

I. Date of Initial Statement of Reasons: November 4, 2010

II. Dates and Locations of Scheduled Hearings

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| (a) | Notice Hearing: | Date: September 16, 2010
Location: McClellan, California |
| (b) | Discussion Hearing: | Date: December 16, 2010
Location: Santa Barbara, California |
| (c) | Adoption Hearing | Date: February 3, 2011
Location: Sacramento, California |

III. Description of Regulatory Action:

- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

On August 5, 2009, the California Fish and Game Commission (Commission) adopted regulations to implement marine protected areas (MPAs) within the second study region along the north central coast being considered under the Marine Life Protection Act (MLPA, Stats. 1999, ch. 1015). Upon implementation of these regulations, questions were raised regarding consequences of the new regulations to tribal communities.

Specifically, the creation of the Stewarts Point State Marine Reserve (SMR) prohibited the Kashia Band of Pomo Indians of the Stewarts Point Rancheria from fishing and gathering from shore for subsistence and ceremonial purposes within traditional areas that were incorporated into the SMR. Adopted regulations for the SMR prohibited the take of all living marine resources.

The Commission received testimony at its June 24, 2010, meeting from tribal members who detailed the potential negative impacts that the no-take SMR would have to their entire community who still depend on the area for subsistence and ceremonial purposes. As a result of this testimony and other specific information provided at the June 24 meeting,

including a formal MPA proposal for the area from the Kashia Band of Pomo Indians, the Commission chose to initially approve of proposed changes to the regulations for Stewarts Point SMR through an Emergency Action that is scheduled to expire January 18, 2011.

The proposed change modifies the onshore boundary of the Stewarts Point SMR, and creates an onshore State Marine Conservation Area (SMCA) which allows for some take to occur for all users (Table 1). The Stewarts Point SMCA extends from the mean high tide line out to a line that approximates 1000 feet offshore, and from the northern boundary of the existing Stewarts Point SMR, extending south approximately four miles to just below Rocky Point (Figure 1).

The Kashia Band of Pomo Indians proposal requested that the no-take Stewarts Point SMR be modified so that a section of the shoreline would become a SMCA that allowed for recreational take (Table 1). Their proposed boundary ran from the mean high tide line out to a distance of 300 feet. However, in order to meet previous Department of Fish and Game (Department) design feasibility guidance on designing MPAs, the Commission opted to extend the offshore boundary out to a line that approximates 1000 feet. Even though these modifications allowed for an SMCA to occur within an area that was previously a no-take reserve, there was no overall change to the connectivity of the MPA network. This was achieved because the original Stewarts Point SMR exceeded minimum size guidelines for connectivity as outlined by the Master Plan Science Advisory Team. However it should be noted that the level of protection for the modified SMCA was reduced from very high to low due to the allowed recreational take for all users.

Table 1. Proposed regulations for the Stewarts Point SMR/SMCA complex.

MPA Name	Proposed Allowed Take	SAT Level of Protection
Stewarts Point State Marine Reserve	Take of all living marine resources is prohibited	Very High
Stewarts Point State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT the recreational take from shore only of: marine aquatic plants other than sea palm, marine invertebrates, finfish by hook and line, surf smelt by beach net, and species authorized in Section 28.80 of these regulations by hand-held dip net.	Low

The proposed regulations will make permanent the emergency regulations described above.

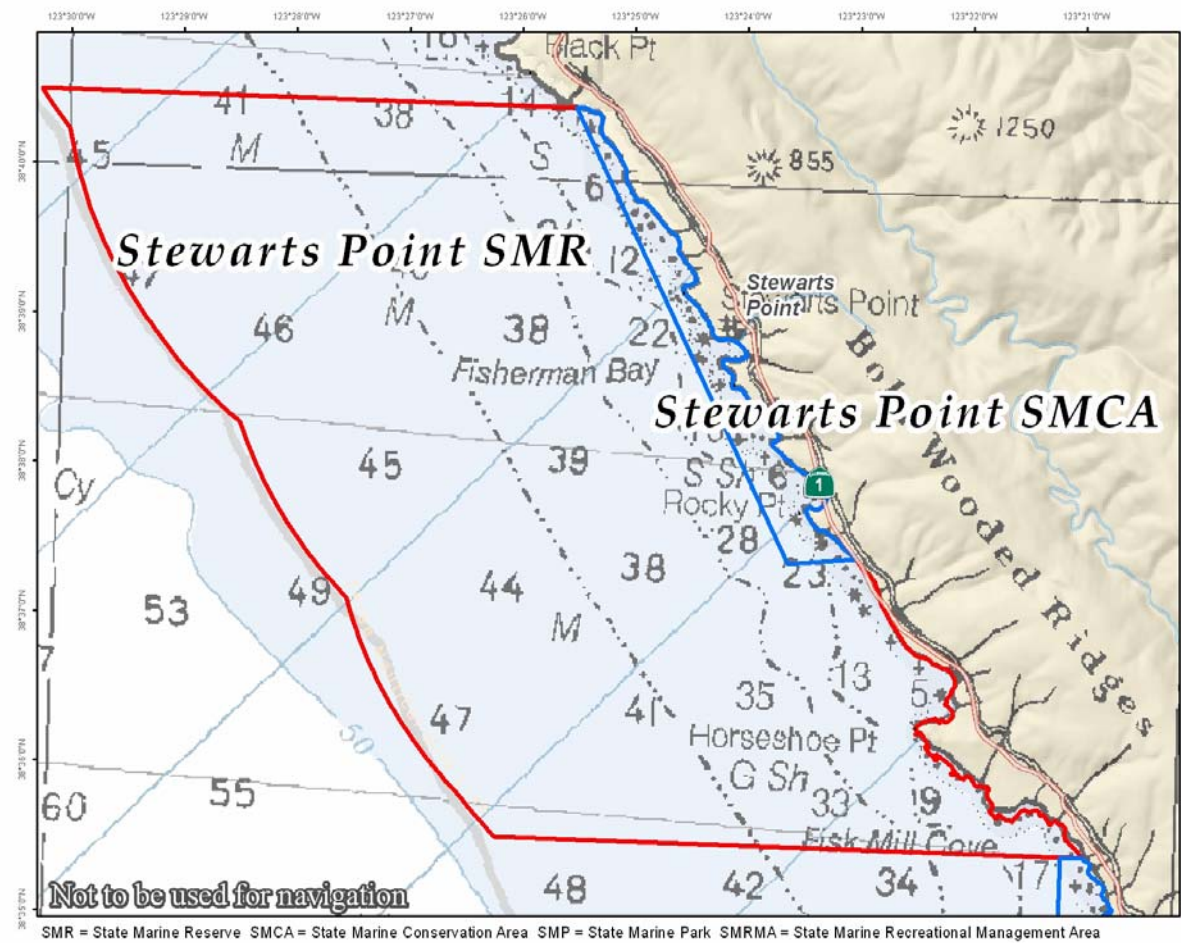


Figure 1. Stewarts Point SMR and SMCA complex as amended by the Commission.

- (b) Authority and Reference Sections from Fish and Game Code and Public Resources Code for Regulation:

Authority: Sections 200, 202, 203.1, 205(c), 219, 220, 1590, 1591, 2860, 2861, and 6750, Fish and Game Code; and Sections 36725(a) and 36725(e), Public Resources Code.

Reference: Sections 200, 202, 203.1, 205(c), 219, 220, 1580, 1583, 2861, 5521, 6653, 8420(e), and 8500, Fish and Game Code; and Sections 36700(e), 36710(e), 36725(a) and 36725(e), Public Resources Code.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None.

- (d) Identification of Reports or Documents Supporting Regulation Change:

Attachment 1: Regional goals, objectives, and design and implementation considerations for the north central coast regional component of a statewide MPA network

Attachment 2: June 11, 2007 Memo: Department of Fish and Game Statement of feasibility criteria for use in analyzing siting alternatives

Attachment 3: February 11, 2008 Memo: Department of Fish and Game update of feasibility criteria for use in analyzing siting alternatives

- (e) Public Discussions of Proposed Regulations Prior to Notice of Publication:

June 24, 2010 Commission meeting, Folsom, CA

September 16, 2010 Commission meeting, McClellan, CA

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

None.

- (b) No Change Alternative:

The no change alternative would allow the emergency action to expire on January 18, 2011, at which time the area in question would revert to the initial definition of the Stewarts Point SMR in state waters of the north central coast, with no provision for the Stewarts Point SMCA. The no-

change alternative would not address the issues and concerns raised by the Kashia Band of Pomo Indians.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action would have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulation has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulation affects approximately 25 square nautical miles. The impacts are anticipated to be minor.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

Any additional costs to State agencies for enforcement, monitoring, and management of MPAs are difficult to estimate and depend on not only the impacts of the proposed regulation but also other regulations and processes.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs Mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to Be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

- (h) Effect on Housing Costs:

None.

Informative Digest / Policy Statement Overview

On June 24, 2010 the California Fish and Game Commission (Commission) adopted Emergency Regulations for the Stewarts Point State Marine Reserve (SMR). The adoption of these regulations was based on public support and tribal request. After working to adhere to Department of Fish and Game (Department) feasibility guidance and working with other non-government organizations, the Kashia Band of Pomo Indians of the Stewarts Point Rancheria developed a proposal that would allow access to traditional subsistence and ceremonial locations that had previously been incorporated into the Stewarts Point SMR, a no-take marine protected area (MPA).

The Kashia Band of Pomo Indians proposal requested that the no-take Stewarts Point SMR be modified so that a section of the shoreline would become a State Marine Conservation Area (SMCA) that allowed for recreational take (Table 1). Their proposed boundary ran from the mean high tide line out to a distance of 300 feet. However, in order to meet previous Department design feasibility guidance on designing MPAs, the Commission opted to extend the offshore boundary out to a line that approximates 1000 feet. Even though these modifications allowed for an SMCA to occur within an area that was previously a no-take reserve, there was no overall change to the connectivity of the MPA network. This was achieved because the original Stewarts Point SMR exceeded minimum size guidelines for connectivity as outlined by the Master Plan Science Advisory Team. However it should be noted that the level of protection for the modified SMCA was reduced from very high to low due to the allowed recreational take for all users.

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